

District and Municipal Court

Implementation Questions and Answers Subsequent to SCAO Administrative Memorandum 2003-08.

1. Does the civil motion fee apply to small claims, landlord tenant and other summary proceedings, and civil infractions?

Yes, it applies to small claims, landlord tenant, and other summary proceedings. No, it does not apply to civil infractions.

2. What is included in the term “motion?”

MCR 2.119(G)(1) states “A motion fee must be paid on the filing of any request for an order in a pending action, whether the request is entitled ‘motion,’ ‘petition,’ ‘application,’ or otherwise.”

3. If the court receives two motions for the same case, does the court charge one motion fee or two?

MCR 2.119(G)(2) states “The clerk shall charge a single motion fee...for all motions filed at the same time in an action regardless of the number of separately captioned documents filed or the number of distinct or alternative requests for relief included in the motions.”

4. What fees are collected on a request for a judgment debtor discovery subpoena, a writ of garnishment, attachment, or execution pursuant to MCL 600.8306?

Collect only the fee of \$15 listed in MCL 600.8306.

5. What is the proper distribution of the new small claims fee of \$25?

The original fee distribution chart, which accompanied SCAO Administrative Memorandum 2003-08, contained an error, stating the distribution was \$11.50 and \$13.50. The correct distribution is \$11.00 to the district funding unit and \$14.00 to the state civil filing fee fund.

6. What amount is collected for a claim and delivery with a supplemental request for money judgment?

The claim and delivery fee is \$65.00. Add to that the amount of the filing fee for a money judgment based upon the amount of the claim.

Up to \$600	$\$65 + \$25 = \$90$
\$601 - \$1,750	$\$65 + \$45 = \$110$
\$1,751 - \$10,000	$\$65 + \$65 = \$130$
Over \$10,000	$\$65 + \$150 = \$215$

7. Should the court maintain two versions of fines and costs – one for judgments entered before October 1, 2003 and the other for judgments entered on or after October 1, 2003?

This is dependent upon the case management software used by the court. Judgments entered before October 1, 2003 must be collected in the amounts and categories specified, based upon the law at that time. Transmission of the state's portion of the judgment is completed by putting all state revenue into the Justice System Fund.

8. If a "serious misdemeanor" or "specified misdemeanor" is reduced to a "simple misdemeanor," would the state minimum cost be \$45 or \$40?

If conviction is for a simple misdemeanor reduced from either a serious or specified misdemeanor, the state minimum cost is \$40. For additional information, see the chart titled Assessment of Crime Victim Fee and State Minimum Cost.

9. On a multi-count case where more than one count has a conviction entered, is the state minimum cost assessed on each count?

Yes, the state minimum cost is assessed on each count with a conviction.

10. Municipal courts have not charged the \$9 state minimum cost on misdemeanors in the past. Does this legislation require municipal courts to assess the new justice system assessment in the same manner as district courts?

Yes, municipal courts must assess the new state minimum cost of either \$40 or \$45 on misdemeanors and the justice system assessment of either \$10 or \$40 on civil infractions.

11. Do non-moving civil infractions - like Pedestrian Violation; Skateboard; Bike Violations – receive the \$40 or \$10 justice system assessment?

If the violation is in the Michigan Vehicle Code or a substantially corresponding local ordinance, as many pedestrian and bicycle violations are, the assessment is \$40. A civil infraction not found in the MVC, written under another state law or local ordinance, is either a state civil infraction or a municipal civil infraction, and the assessment is \$10.

12. How are the municipal courts affected by the civil filing fee changes?

The filing fees for claims for money judgments in municipal courts have not changed.

The fee for filing a landlord tenant or other summary proceeding for possession of premises increases from \$32 to \$45.

13. Under what circumstances can state minimum cost be waived?

The only provision for remitting the state minimum cost is when the court has ordered payment of the state minimum cost as a term of probation, which the court is required to do under MCL 771.3(1)(g), but the defendant, who is not in willful default, is unable to

pay and petitions the court for remission of the unpaid portion of all costs, including possible state minimum costs.

14. Are motion fees collected in the following circumstances?

Motion to Amend Complaint – YES. Although an actual order may not be signed, it is a motion that is filed with the court which asks that the court or judge rule in favor of an action that is being requested by the applicant. *MCR 2.119(G)(1)*

Application for Certification – NO. Although there is a request for the court to perform an action, it is merely the court certifying that the record is true and accurate. It does not result in an action directed in favor of the applicant. It is merely for the purpose of certifying a true and accurate record to the appellate court for purposes of appeal.

Garnishment Release – NO. There is no motion being filed. A plaintiff is merely releasing a defendant from further liability. This is along the same lines as a voluntary dismissal. *MCR 2.119(G)(1)*

Motion and Order to Show Cause – YES. This is a motion that is filed with the court asking that an act be performed and requesting a hearing to require compliance with a previously filed order. The applicant is asking that an act be performed and directed in his/her favor. *MCR 2.119(G)(1)*

Petition and Bench Warrant – NO. These are either criminal or quasi-criminal in nature. This applies to petitions and bench warrants in both criminal and civil cases. *MCR 2.119(G)(3)(a)*

Motion for Dismissal – YES. This is a motion filed with the court asking that an act be performed and directed in favor of the applicant. *MCR 2.119(G)(1)*

Voluntary Dismissal – NO. The plaintiff is voluntarily dismissing the case of his or her own accord. No act need be performed by the court or judge in favor of the applicant.

Stipulation and Order – NO. A motion fee may not be charged for entry of an uncontested order. *MCR 2.119(D); MCR 2.119(G)(3)(e)*

Consent Judgment – NO. If a motion is filed for entry of a consent judgment, a fee may not be collected. *MCR 2.119(G)(3)(e)* provides that a fee may not be collected for entry of an uncontested order.

Default Judgment – NO. As long as a default judgment is being entered as a clerical or administrative function, there is no motion fee. **If a Motion for Entry of Default Judgment is filed where there is no sum certain and a hearing must be held, then a motion fee would be collected.** *MCR 2.119(G)(1)*

Consent Judgment with Installments – MAYBE. If a motion is made orally, on the record, then NO. If a motion is filed with the court, then YES. *MCR 2.119(G)(1)*

Demand for Removal – **NO**. This is a right that a party is entitled to seek rather than a request for relief.

Motion for Alternate Service – **YES**. This is a motion that is filed with the court asking for the court to perform or direct an act in favor of the applicant. *MCR 2.119(G)(1)*

Motion to Set Aside – **YES**. This is a motion that is filed with the court asking for the court to perform or direct an act in favor of the applicant. *MCR 2.119(G)(1)*

Objections to Entry of Order under MCR 2.602(B) – **NO**. *MCR 2.119(G)(3)(b)*

Objections to Garnishment – **NO**.

Objections to Installment Payments – **NO**.

The motion fee has already been paid and this is merely an objection to entry of the proposed order.

Petition to Set Aside Installment Payments – **YES**. This is a motion that is filed with the court asking for the court to perform or direct an act in favor of the applicant. *MCR 2.119(G)(1)*

Motion for Second Summons – **YES**. This is a motion that is filed with the court asking for the court to perform or direct an act in favor of the applicant. *MCR 2.119(G)(1)*

15. Are motion fees taxable as costs?

Motion fees may be taxable as costs to a party.

DEFINITIONS FOR PURPOSE OF MOTION PRACTICE UNDER MCR 2.119

Pending Action – Any case that has one or more unresolved issues, including if they are post-judgment, that requires any action by the court or judge and is in the process of settlement or adjustment of those issues. The only actions that are not considered pending are closed cases with no post-judgment activity, and those that contain an order granting a stay on the entire case (i.e. bankruptcy).

Motion – Any application by any name (i.e. motion, petition, application, request, etc.) that is made to the court or judge for the purpose of obtaining a rule, order or act to be directed in favor of the applicant.

